

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1049 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

STATE OF GUJARAT

Versus

JAGJIVANBHAI DHANJIBHAI PATEL

Appearance:

Mr.S.R. Divetia, APP, for Petitioner

MR BD KARIA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 11/09/98

ORAL JUDGEMENT

By means of filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, the State of Gujarat has questioned correctness and legality of the judgment and order September 26, 1988, rendered by the learned Judicial Magistrate, First Class, Jamnagar, at Jodiya, in Criminal Case No.405 of 1984, whereby, the

respondent No.1-original accused came to be acquitted from the charges framed against him for the offences punishable under Sections 7 and 16 of the Prevention of Food Adulteration Act ("Act" for short).

It is the case of the prosecution that the Food Inspector, Mr.S.H. Pandya, had visited the shop of the respondent No.1, situated at village Jam-Dudhai, Taluka Jodiya, District Jamnagar, on July 10, 1984, in presence of one panch, Becharbhai Mohanbhai Patel. The respondent No.1 was carrying on the business of selling provisional items in the name and style of "Umiya Provisional Stores". The Food Inspector bought turmeric powder from the shop of respondent No.1 by paying consideration for the same. The Food Inspector divided the said sample, which was collected from the shop of the respondent No.1, into three parts, and filled the said samples in three empty bottles, which were tied and sealed in presence of the abovestated panch, Becharbhai Mohanbhai Patel. Thereafter, a detailed panchanama was prepared in presence of the panchas. One bottle containing the sample of turmeric power was sent to the Public Analyst. On receipt of the report of the Public Analyst, it was found that the sample of turmeric power did not conform to the standards prescribed under the provisions of the Act and the Rules. The Food Inspector, therefore, lodged a complaint in the court of the learned Judicial Magistrate, First Class, at Jodiya, Dist: Jamnagar, which came to be registered as Criminal Case No.405 of 1984.

During the trial, the Food Inspector, Mr. S.H. Pandya, was examined at Exh.19. The panch witness, Becharbhai Patel was examined at Exh.38.

The learned Magistrate, after finding prima-facie case against the respondent No.1, framed necessary charge against the respondent No.1 at Exh.34. The charge was read over and explained to the respondent No.1. The respondent No.1 did not plead guilty to the charge and claimed to be tried. The prosecution led oral as well documentary evidence against the respondent No.1 to substantiate the charge. After recording of evidence of prosecution witnesses was over, further statement of the respondent No.1 was recorded under Section 313 of the Code of Criminal Procedure, 1973. In his statement, the respondent No.1 denied the case of the prosecution. The respondent No.1, in his further statement, stated that no samples were collected by the Food Inspector and the panch witness, Becharbhai Patel, did not accompany the Food Inspector.

On appreciation of the evidence led by the prosecution, the learned Magistrate acquitted the respondent No.1 by the impugned judgment, giving rise to the present appeal.

Mr. S.R. Divetia, learned Additional Public Prosecutor, has taken me through the evidence of the prosecution. The learned APP submitted that the learned Magistrate has erred in acquitting the accused. It is submitted that the learned Magistrate has erred in not appreciating that the Food Inspector had followed all the mandatory provisions of the Rules in collecting samples and forwarding the same to the Public Analyst. It is further submitted that turmeric powder was found to be adulterated and, therefore, the respondents should have been convicted for the said offences, and the appeal should be allowed.

Mr. Karia, learned counsel appearing for the respondents, has submitted that the Food Inspector had not followed the mandatory provisions of the Rule 14 of the Prevention of Food Adulteration Rules and, therefore, on that ground, the respondents deserve to be acquitted and the appeal be dismissed.

The Food Inspector, in his evidence (Exh.19), has not deposed that the bottles, in which the sample of turmeric power were filled in, were cleaned. In the cross examination, he admitted that he did not know when the said bottles were cleaned in his office. The collection of sample of turmeric power was also not proved beyond reasonable doubt. The panch witness, Becharbhai Patel, has not supported the prosecution case and he was declared hostile. It must be stated that, according to the report of the Public Analyst, when the sample of turmeric power was received at the Laboratory, it did not contain the seal. Therefore, in my view, mandatory provisions of the Rule 14 of the Prevention of Food Adulteration Rules are not followed by the Food Inspector. If the mandatory provisions of the Rule 14 of the Rules are not followed by the Food Inspector, then the respondents are entitled to be acquitted. (See: 1995(2) GLR p.1099: State of Gujarat vs. Sohanlal Trikamchand Shah & Others)

It is also pertinent to note that, as per the provisions of the Code, when a search and seizure is carried out, two independent witnesses of the same locality should be kept. It is surprising that at the

time of preparing panchanama, only one independent witness was kept present. Therefore, the Food Inspector has not followed the provisions of the Code with regard to search and seizure and, therefore, on this ground also the respondent No.1 is entitled to be acquitted.

Under the circumstances, it cannot be said that any error is committed by the learned Magistrate in acquitting the respondent No.1 of the offences with which he was charged.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

(swamy)